



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 11863712

Date: FEB. 1, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a contemporary Christian music producer, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner satisfied at least three of the initial evidentiary criteria, as required, she did not show sustained national or international acclaim and demonstrate that she is among the small percentage at the very top of the field of endeavor.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner indicated employment as a chief executive producer at [REDACTED], a parent company of various subsidiaries, in Venezuela since 2002.

A. Evidentiary Criteria

Because the Petitioner has not claimed or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner met three of the evidentiary criteria relating to awards at 8 C.F.R. § 204.5(h)(3)(i), published material at 8 C.F.R. § 204.5(h)(3)(iii), and judging at 8 C.F.R. § 204.5(h)(3)(iv). However, the Director concluded that the Petitioner did not show that she garnered sustained national or international acclaim and that her achievements have been recognized in the field of expertise, demonstrating that she is one of that small percentage who has risen to the very top of the field.

On appeal, the Petitioner argues that she satisfies additional criteria, and her evidence in the aggregate establishes her eligibility as an alien of extraordinary ability. Because the Petitioner has already shown that she satisfies the minimum requirement of at least three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.¹

¹ See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions: Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 13 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim,² that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.³ In this matter, we determine that the Petitioner has not shown her eligibility.

According to her initial cover letter, the Petitioner has been the chief executive producer of [redacted] since 2002. In addition, she has served as the production manager for artist [redacted] employed as lead producer for artist [redacted]'s tours and concerts in Venezuela, and co-founded [redacted] a Christian music band from Colombia. As indicated above, the Petitioner won an award, received some press coverage, and participated as a judge. The record, however, does not demonstrate that her personal and professional achievements rise to a level of "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Immediately prior to the filing of her petition, the Petitioner received an [redacted] Award for her participation as an executive producer on the album, [redacted] by [redacted]. Although the award reflects some recognition of her work by the field, the Petitioner did not demonstrate how this recent, single instance shows a "career of acclaimed work in the field" and demonstrates sustained national or international acclaim. *See* H.R. Rep. No. 101-723 at 59 and section 203(b)(1)(A) of the Act. Further, the Petitioner did not establish, for instance, how her receipt of this sole award compares to those in the upper echelon of her field, placing her among that small percentage at the very top of the field. *See* 8 C.F.R. § 204.5(h)(2).

Similarly, regarding media coverage, the Petitioner offered four items reflecting published material about her in 2006, 2008, 2017, and 2019. However, the Petitioner did not demonstrate that such minimal press coverage, without any media reporting of her in a span of nine years, is consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act. Further, the Petitioner did not show how her overall media coverage is indicative of a level of success with being among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Thus, the Petitioner did not establish that the limited media reporting on her and her activities reflects a career of acclaimed work in the field or a very high standard to present more extensive documentation than that required. *See* H.R. Rep. No. 101-723 at 59 and 56 Fed. Reg. at 30703, 30704 (July 5, 1991).

² *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 14 (stating that such acclaim must be maintained and providing *Black's Law Dictionary's* definition of "sustain" as to support or maintain, especially over a long period of time, and to persist in making an effort over a long period of time).

³ *Id.* at 4 (instructing that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

As it relates to the Petitioner's service as a judge of the work of others, an evaluation of the significance of her experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification. *See Kazarian*, 596 F. 3d at 1121-22.⁴ The record reflects that the Petitioner participated several times as a judge for [REDACTED] a Christian band competition in Colombia.⁵ On appeal, the Petitioner demonstrates that she recently served as a juror for [REDACTED].⁶ Here, the Petitioner's judging experience involves evaluating the work of up-and-coming bands and performers rather than nationally or internationally renowned artists.

Further, the Petitioner did not establish that these occasions contribute to a finding that she has a career of acclaimed work in the field or indicative of the required sustained national or international acclaim. *See* H.R. Rep. No. 101-723 at 59 and section 203(b)(1)(A) of the Act. She did not show, for example, how her experience in amateur competitions compares to others at the very top of the field. The Petitioner did not establish, for instance, that she garnered wide attention from the field based on her judging work. Moreover, serving as a juror does not automatically demonstrate that an individual has extraordinary ability and sustained national or international acclaim at the very top of her field. *Cf.*, *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard). Without evidence that sets her apart from others in her field, such as evidence that she has a consistent history of reviewing or judging recognized, acclaimed experts in her field, the Petitioner has not shown that her judging experience places her among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Beyond the three criteria that the Petitioner satisfied, we consider additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility as an alien of extraordinary ability. Here, for the reasons discussed below, we find that the evidence does not establish that the Petitioner has sustained national or international acclaim and is among the small percentage of the top of her field.

The Petitioner indicated her membership with the Society of Authors and Composers of Venezuela (SACVEN). However, the Petitioner did not demonstrate that this membership somehow garnered her sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. For instance, the Petitioner did not submit evidence showing that her membership resulted in widespread or significant attention. *See* 56 Fed. Reg. at 30704. In addition, she did not establish how her membership with SACVEN reflects that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(3).

Furthermore, the Petitioner provided evidence that she received a patent for her authored song, [REDACTED]. Although she indicated that other artists have sung her song, the Petitioner did not show that she garnered national or international acclaim. *See* section 203(b)(1)(A) of the Act. The record also contains recommendation letters commenting on her skills and abilities and confirming

⁴ *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (stating that an individual's participation should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

⁵ The record indicates that the Petitioner also founded [REDACTED].

⁶ The record contains evidence showing that she possessed voting membership with the Latin Recording Academy of Arts and Sciences; however, she did not demonstrate that she actually voted in the Latin Grammy process.

her work with various artists, such as [redacted] and [redacted]. The letters, however, do not contain sufficient information and explanation to show that the Petitioner is viewed by the overall field, rather than by a solicited few, as being among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). While the letters highlight the Petitioner's professional accomplishments, they do not show how they rise to a level of sustained national or international acclaim and whose achievements have been recognized the field through extensive documentation. *See* section 203(b)(1)(A) of the Act and 56 Fed. Reg. at 30704. The Petitioner did not establish that she has made impactful or influential contributions in the greater field reflecting a career of acclaimed work in the field, garnering the required sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act.

Similarly, the Petitioner did not demonstrate that her work at [redacted] with other artists such as [redacted] and [redacted], and at venues such as [redacted] (Florida) and [redacted] ([redacted] Colombia), resulted in widespread acclaim from her field, that she drew significant attention from the greater field, or that the overall field considers her to be at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704. While the Petitioner produced three concerts performed by [redacted] at [redacted] Stadium in Venezuela, the Petitioner did not establish that her roles or professional accomplishments caused her national or international acclaim or reflect a career of acclaimed work in the field. *See* section 203(b)(1)(A) of the Act and H.R. Rep. No. at 59.

Finally, although she documented her income from 2014, the Petitioner did not establish that she commanded any earnings since then, demonstrating a level of compensation commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The Petitioner did not show that her wages are tantamount to an individual who is among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Here, she did not demonstrate that she received notoriety or attention based on her earnings, separating herself from others in the field.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. Here, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. Even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Price*, 20 I&N Dec. at 954. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that she has sustained national or international acclaim and is among the small percentage at the top of her field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.